Office-Supreme Court, U.S.
FILED
JUL 8 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1860

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JIMMY BEAN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

TYRONE C. FAHNER
Attorney General
State of Illinois

MELBOURNE A. NOEL, JR.
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-1090
Attorneys for Respondent

MICHAEL VUJOVICH
MICHAEL V. ACCETTURA
Assistant Attorneys General
Of Counsel

SCHNEPP & BARNES PRINTERS, INC., SPRINGFIELD, ILL.

QUESTION PRESENTED FOR REVIEW

I. Whether the Illinois Supreme Court's decision in affirming the Illinois Appellate Court's decision reversing the trial court's granting of Appellant's motion to quash his arrest was correct in light of this Court's decision in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371 (1980).

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Authorities	ii
Opinion Below	1
Jurisdiction	1
Constitutional Provisions	2
Statement of the Case	3
Reasons for Denying the Writ	
I. The Facts of the Case at Bar Clearly Indicate that There Was Probable Cause to Arrest Petitioner Accompanied by Consensual Entry into His Dwelling Place; The Illinois Reviewing Courts Have Not Avoided the Impact of This Court's Decision in *Payton v. New York*	5
Conclusion	9

TABLE OF AUTHORITIES

Dorman v. United States, 435 F.2d 385 (D.C. Cir. 1970) Cited herein at	7
Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367 (1948) Cited herein at	5
McDonald v. Matlock, 415 U.S. 164, 94 S.Ct. 988 (1974) Cited herein at	8
Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371 (1980) Cited herein at	7, 8
People v. Bean, 84 Ill. 2d 64 (1981) Cited herein at	8
People v. Heflin, 71 Ill. 2d 525 (1978) Cited herein at	8
Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973) Cited herein at	7
United States v. Miroff, 606 F.2d 777 (7th Cir. 1979), *cert. denied*, 445 U.S. 928, 100 S.Ct. 1315 (1980)	6
United States v. Block, 590 F.2d 535 (4th Cir. 1978)	6

No. 80-1860

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JIMMY BEAN,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

OPINION BELOW

The opinion of the Appellate Court of Illinois, First District, is reported at 73 Ill. App. 3d 918, 392 N.E.2d 650 (1979). (Opinion attached as Appendix to Petitioner's Petition).

The opinion of the Illinois Supreme Court is reported at 84 Ill. 2d 64, ___ N.E.2d ___ (1981). (Opinion attached as Appendix to Petitioner's Petition).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition. However, as treated more fully in the argument contained herein, Respondents do not believe that the Petitioner

has shown any reason for this Court to exercise its discretion to grant the Petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS

Petitioner relies on the Fourth and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner Jimmy Bean was charged by indictment, along with Frank Byrd and Jessie Byrd; with two counts of armed robbery.

On March 5, 1975, two men, armed with a sawed-off shotgun and a pistol, entered a cleaning store and took money and phonograph records.

On March 6th, investigating officer Thomas Lahm telephoned Lucinda Birmingham, whose name, address and telephone number appeared on the police report of the incident. Ms. Birmingham told Officer Lahm that while she was standing across the street she observed two men come out of the cleaners and join two other men outside. She then observed all four flee from the scene. She told Officer Lahm that one of the men outside of the cleaners was Jimmy Bean, with whom she had previously gone to school. She also stated that Bean was 17 or 18 years old and that he lived in the vicinity of Keeler and Gladys Streets in Chicago.

Lahm thereafter checked the police alphabetic file and discovered that a Jimmy Bean had previously been arrested by Oak Park police in 1974 and had given his address as 4211 West Gladys Street. Lahm also discovered that a Jimmy Bean had gone to school at Van Buren and Keeler Streets and lived at 4211 West Gladys.

As indicated in the hearing on the motion to quash petitioner's arrest, on March 13th at 8:00 a.m., Lahm and Officer Korte, accompanied by two other officers arrived at 4211 West Gladys without a warrant. The accompanying officers proceeded to the rear of the building while Lahm and Korte went to the front door and knocked. The mother of the petitioner opened the door and the officers showed her their badges.

They also stated that they wished to see Jimmy. She invited the officers into the vestibule area and she went into her bedroom to put on a robe. When she returned, the officers again asked to see the petitioner. Mrs. Bean indicated that she would go into the bedroom and get him.

At this point, Officer Lahm testified that the petitioner emerged from a bedroom, whereupon he was arrested at the doorway to the bedroom. Mrs. Bean stated that Officer Korte went past her with his gun drawn, and went into the bedroom and told petitioner to get dressed. Petitioner, after his arrest, was searched for weapons, taken to the police car and advised of his constitutional rights.

A few minutes later, petitioner made an oral statement concerning the robbery. This statement was substantially the same as a written statement later made at the police station, and indicated that Frank and Jessie Byrd participated in the robbery with petitioner.

The trial court allowed petitioner's motion to quash his arrest. One week later, the trial court entered an order to suppress petitioner's statements as the fruits of an illegal arrest.

The State Appellate Court reversed and remanded these decisions, noting that the police had probable cause to arrest petitioner. The appellate court also directed the trial court to conduct a hearing on the voluntariness of petitioner's in-custody statements.

The State Supreme Court affirmed the decision of the appellate court.

REASONS FOR DENYING THE WRIT

I. The facts of the case at bar clearly indicate that there was probable cause to arrest petitioner accompanied by consensual entry into his dwelling place; the Illinois Reviewing Courts have not avoided the impact of this court's decision in *Payton v. New York*.

The Illinois Appellate Court, First Judicial District, correctly reversed the trial court order quashing petitioner's arrest. The Supreme Court of Illinois properly affirmed the decision of the appellate court, holding that there was probable cause to arrest petitioner, accompanied by consensual entry into his dwelling place. The facts of this case clearly support the Illinois reviewing courts' decisions.

In deciding the issue in this case, two factors must first be considered: first, whether there was probable cause to arrest petitioner and, second, whether there was consent to enter petitioner's dwelling place to effect his arrest.

1. Probable Cause

It has long been settled, and is still a basic tenet of law that an officer may make an arrest on a felony when he has reasonable ground to believe that a felony was committed and reasonable ground to believe that the person arrested committed said felony. *Johnson v. United States*, 333 U.S. 10, 68 S. Ct. 367 (1948).

In the instant case, it is undisputed that a felony, the armed robbery of the cleaning store, had been committed.

Secondly, the facts indicate that Officer Lahm had reasonable ground to believe that the person he arrested, the petitioner, committed or was involved in the commission of that felony. A Jimmy Bean was identified by a former schoolmate

as being one of four persons who fled the scene of the robbery. The witness, Lucinda Birmingham, also knew that the fleeing person, Jimmy Bean, was 17 or 18 years old, and lived in the vicinity of Keeler and Gladys Streets. A check of police files revealed that a Jimmy Bean, who resided at 4211 West Gladys, had been arrested in 1974 by Oak Park police. Furthermore, the Jimmy Bean listed in the police file attended the same school as Ms. Birmingham.

In light of the information contained in Ms. Birmingham's statement, as well as the information in police files, it is clear that the police had reasonable ground to believe that Jimmy Bean, of 4211 West Gladys Street, committed or was involved in the commission of the armed robbery of the cleaning store on March 5th. There was clearly probable cause to arrest petitioner.

2. Consent

Once the officer had probable cause to arrest petitioner and proceeded to 4211 West Gladys, the issue became whether there was consent for the officers to effect his arrest.

Further, if the officers were in his home by virtue of a valid consent, the question is whether the arrest itself violated petitioner's constitutional rights.

Mrs. Bean's testimony indicated that she asked the officers into the apartment. This occurred after the police identified themselves, showed her their badges and indicated they were looking for Jimmy Bean.

Voluntary consent to justify a warrantless search may be given by a third party who possesses common authority over, or other sufficient relationship to, the premises sought to be inspected. *United States v. Matlock*, 415 U.S. 164, 94 S. Ct. 988 (1974); *United States v. Miroff*, 606 F. 2d 777 (7th Cir. 1979), *cert. denied*, 445 U.S. 928, 100 S. Ct. 1315 (1980); *United States v. Block*, 590 F. 2d 535 (4th Cir. 1978).

Thus, there was clearly valid consent permitting the officers to enter petitioner's dwelling place.

Once validly inside the apartment, the officers saw petitioner emerge from a bedroom and went over to the bedroom door and effected his arrest. Clearly, inasmuch as the police had probable cause to arrest petitioner, they were proper, upon seeing him emerge from the room, in arresting him.

In *Dorman v. United States*, 435 F. 2d 385 (D.C. Cir. 1970), a case cited extensively by petitioner in his petition, the Court held that once there is a valid entry into a home for the purpose of making an arrest, the police may search for the limited purpose of finding the person to be arrested. 435 F. 2d at 394.

Petitioner's argument and citation of authority overlook the consent to the officers' entry as an established exception to the warrant requirement of the Fourth and Fourteenth Amendments. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041 (1973).

Thus, in the instant case, due to the fact that there was probable cause to arrest petitioner, accompanied by consensual entry into his dwelling place, it is clear that his arrest was proper and that his constitutional rights were not violated in effecting that arrest.

3. Payton v. New York

Petitioner premises his argument on the fact that the Illinois Supreme Court allegedly avoided the impact of *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980), in making its decision.

Additionally, petitioner bases a great deal of his argument on the fact that the police did not meet the "*Dorman* test" regarding exigent circumstances justifying a forceful entry to effect a warrantless arrest.

With respect to petitioner's second argument, it is clear that the issue of exigent circumstances is completely inapplicable to the facts of the instant case. As indicated above and by the record of the hearing on the motion to quash the arrest, the entry into petitioner's dwelling place was *consensual* not forceful. Thus, petitioner's lengthy discussion of *Dorman* is both irrelevant and unnecessary.

Petitioner's main allegation, that the Illinois reviewing courts avoided the impact of *Payton*, is also unfounded. A review of the Illinois Supreme Court's decision indicates that the Court not only considered *Payton*, but distinguished *Payton* from the instant case. *People v. Bean*, 84 Ill. 2d 64, 70 (1981). While recognizing that generally an arrest warrant is the desired means by which an individual's right to privacy is protected, the Court also found that in the case at bar, unlike *Payton*, the entry was not forcible, but consensual; *People v. Bean*, 84 Ill. 2d at 70, citing *Payton v. New York*, *supra*; *McDonald v. Matlock*, 415 U.S. 164, 94 S. Ct. 988, 993 (1974); *People v. Heflin*, 71 Ill. 2d 525, 541 (1978).

Indeed, petitioner, in his petition, cites *Payton* as holding that "police are prohibited by the Fourth Amendment . . . from making a warrantless and *nonconsensual* entry into a suspect's home in order to make a routine felony arrest." (Emphasis added), Petition at 14. Thus, petitioner, in a contradictory stance, berates the Illinois Supreme Court for adopting its "own exception" (consent) to *Payton*, while at the same time admitting that consent does not fall within the purview of the *Payton* decision. *See*, 100 S. Ct. at 1378.

Thus, it is clear from the foregoing that not only was petitioner's arrest proper under the "probable cause accompanied by consent" theory, but also that the Illinois reviewing courts were correct in reversing the trial court. These courts did consider the impact of *Payton* and found its reasoning and import inapplicable in the instant case. Petitioner's arrest was proper and there was no violation of his constitutional rights.

CONCLUSION

For the foregoing reasons, Respondent prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

MELBOURNE A. NOEL JR.,
Assistant Attorney General,
500 South Second Street,
Springfield, Illinois 62706,
(217) 782-1090,

Attorneys for Respondent.

MICHAEL VUJOVICH,
MICHAEL V. ACCETTURA,
Assistant Attorneys General,

Of Counsel.